

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CYLE ANDREW JONES, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAWN KELL JOSLYN,

Respondent,

and

GWENDELIN JONES,

Respondent-Appellant.

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UNPUBLISHED

August 16, 2007

No. 274104

Oakland Circuit Court

Family Division

LC No. 05-715306-NA

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Contrary to respondent-appellant's argument that the record contains no evidence that the child suffered physical injury or abuse, the record demonstrates that Cyle suffered physical abuse, although respondent-appellant's conduct may not have left marks or bruises evidencing injury on some occasions. *Random House Webster's College Dictionary* (2001) defines abuse as "to treat in a harmful or injurious way." Respondent-appellant's conduct in holding a pillow over Cyle's face satisfies this definition. Respondent-appellant admitted that she held a pillow over Cyle's mouth to stop him from screaming when he was having a temper tantrum. Although she knew that her conduct could have suffocated Cyle, she maintained that she was very intoxicated that day.

The evidence also established that respondent-appellant chased Cyle around the yard with a shoe while intoxicated and pulled out some of his hair. Thus, he suffered physical injury, or, at a minimum, physical abuse. Respondent-appellant's blood alcohol level was later discovered to

be .358 following that incident. Respondent-appellant's sister, Helen Jones, also witnessed respondent-appellant chase Cyle with certain items and "whip his behind" when he was misbehaving. Therefore, the record establishes that Cyle suffered physical injury or abuse because of respondent-appellant's actions, and respondent-appellant's failure to properly address her alcohol dependency indicated a reasonable likelihood of further injury or abuse if Cyle returned to respondent-appellant's home.

The evidence further showed that respondent-appellant failed to provide proper care or custody for Cyle and that there existed no reasonable expectation that she would be able to do so within a reasonable time. Respondent-appellant was often intoxicated while alone with Cyle and failed to recognize that her behavior negatively affected him. She also frequently canceled Cyle's therapy sessions or simply failed to appear at appointments, despite his special needs. The record shows that respondent-appellant's alcoholism and mental illness interfered with her ability to properly parent Cyle, and her condition remained unchanged during the pendency of this proceeding.

Once petitioner presented clear and convincing evidence in support of at least one basis for termination, the trial court was required to terminate respondent-appellant's parental rights unless there existed clear evidence that termination was not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The trial court stated that it was not persuaded that termination was clearly not in Cyle's best interests. We agree with the trial court that, while some evidence suggested that termination was not in Cyle's best interests, it did not rise to the level necessary to prevent termination of respondent-appellant's parental rights. Evidence at the best interests hearing demonstrated that respondent-appellant had a "tenuous grasp of reality" and was not capable of providing appropriate care for Cyle given his significant needs. She was never able to produce negative alcohol screens on a regular basis; indeed, several of her screens were positive for adulterants, resulting in her visitation being suspended. Cyle also indicated that he was scared of respondent-appellant when she had been drinking. Under the circumstances, the trial court's best interests determination was not clearly erroneous, especially because "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael J. Talbot  
/s/ Donald S. Owens